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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

August 31, 2011

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

Via Electronic Transmission

The Honorable Eric H. Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Attorney General Holder and Director Mueller:

I write to express my concerns regarding recent legal developments involving the anthrax-laced letters the Federal Bureau of Investigation (FBI) alleges were mailed by Army scientist Bruce Ivins in 2001. It is my understanding that the Department of Justice (DOJ), in attempting to defend the government from a wrongful death suit filed by one of the victims of the 2001 anthrax attacks, filed documents in the Federal District Court for the Southern District of Florida that seemingly contradicted previous information provided to congressional leadership and the American people. These court documents initially indicated that the DOJ no longer believed that Dr. Ivins created refined anthrax powder in his laboratory. This information seemed to directly refute previous investigative information uncovered by the FBI which specifically identified his access to specialized laboratory equipment as a justification for the investigation of Dr. Ivins, and evidence that he was the lone suspect and would be found guilty beyond a reasonable doubt.

However, after the filing was made public and the differing positions were highlighted by the media, the DOJ subsequently filed court documents and attempted to retract the information that appeared to dispute the FBI's investigation of Dr. Ivins. The DOJ clarified that Dr. Ivins did in fact possess a machine, referred to in court documents as a lyophilizer, which could be used to dry anthrax spores. Nevertheless, the lyophilizer was not directly located in his laboratory, and scientific colleagues that worked with Dr. Ivins continue to assert in sworn depositions that it was virtually impossible for Ivins to create anthrax spores in his laboratory. While DOJ was ultimately successful in amending its filing in this civil case, the sworn depositions of two government employees continue to contradict the FBI's case that Dr. Ivins could have produced anthrax.

The FBI has consistently asserted that Dr. Ivins created anthrax powder in his laboratory while he was employed at the U.S. Army Medical Research Institute of Infectious Diseases at Fort Detrick, MD. This allegation was based in part on Dr. Ivins' access to specialized equipment. Moreover, the FBI emphasized that Dr. Ivins laboratory time significantly increased prior to the mailing of the letters, thus enhancing the circumstantial evidence of the investigation.

Unfortunately, the DOJ and FBI never obtained a criminal indictment of Dr. Ivins prior to his suicide in 2008.

My concern is accentuated by the apparent contradiction of the DOJ court documents to the original FBI investigation, the subsequent attempt to retract that information and the federal judge's ruling that the DOJ Civil Division "show good cause" to justify a modification to the original court filing. The DOJ original court filing seemingly eliminated the FBI's previous circumstantial evidence associated with Dr. Ivins without providing any additional insight as to the means and methodology he may have used to create the anthrax powder. This is particularly troubling given the February 2011 report by the National Academy of Sciences which questioned the FBI's previous analysis correlating the mailed anthrax to that of the supply maintained by Dr. Ivins in his laboratory.

While I recognize the FBI has concluded their investigation into the matter, the recent confusion created by the DOJ has produced a new set of questions regarding this unsolved crime. Consequently, I request that the DOJ and the FBI provide a briefing to my staff so that I may better understand the situation and determine why it appears, at the least, that the right hand and left hand of the DOJ do not know what the other is doing. The obvious ramifications of this matter require objective and honest answers. Further, I would like this briefing to include an update on the outstanding investigation into whom at the DOJ and/or FBI leaked information to the press regarding the investigation of Dr. Steven Hatfill. As you are well aware, this investigation into the leak to the media has been ongoing for a number of years and yet, no individuals have been publicly named or reprimanded. I find this particularly troubling given that the American taxpayers ultimately picked up the tab and paid Dr. Hatfill nearly \$6 million as a settlement in a civil case.

Thank you for your cooperation and attention to this important matter. I appreciate you scheduling this briefing with my staff as soon as possible.

Sincerely,



Charles E. Grassley
Ranking Member